IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.1334 OF 2005

Sher-e-Punjab CHS Ltd. & Ors. ..Petitioners.

Vs.

Gurnam Singh Hothi & Ors. ..Respondents.

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Mr.Rahul Rao for the Petitioners.

Mr.B.R.Zaveri for Respondent Nos.1 to 4.

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CORAM : DR.D.Y.CHANDRACHUD, J.

5th May, 2005.

P.C. :

1. The Petitioner is a co-operative housing society registered under the Maharashtra Co-operative Housing Societies Act, 1960. Since the earlier managing committee which was elected for the co-operative year ending 2003 had not convened an annual general meeting within the time specified by Section 75 and had not held the elections, the Fifth Respondent was appointed as a Returning Officer under Section 73-H by the Deputy Registrar, K/East ward. The Returning Officer

published the election programme and it is common ground that the elections were held on 1st February, 2004 on which date the results were declared by the Returning Officer. On 3rd February, 2004 a notice was issued for the holding of a special general body meeting on 7th February, 2004 to declare the results of the election and one of the items on the agenda was to declare the results of the election to the managing committee. Respondents 1 to 4 filed an election petition on 5th April, 2004. After the written statement was filed, the Petitioner made an application on 1st July, 2004 for a decision on the question as to whether the election petition was barred by limitation as a preliminary issue. Section 92(1)(d) provides that notwithstanding anything contained in the Limitation Act, 1963, but subject to the provisions made specifically in the Act, the period of limitation, when the dispute is in respect of an election of a committee or its officers of the society, be two months from the date of the declaration of the result of the election. The short question which falls for consideration is as to whether the date of the declaration of the results must be taken as 1st

February, 2004 as contended by the Petitioner or 7th February, 2004 as contended by Respondents 1 to 4. If the date of declaration is 1st February, 2004, it is common ground that the election petition would be barred by limitation. Respondents 1 to 4 have relied upon the provisions of Rule 60(7) of the Maharashtra Co-operative Societies Rules, 1961, in which provision has been made for the holding of a general meeting and for the announcement of the result of the voting by the President. On the other hand according to the Petitioners, the erstwhile committee had failed to hold a general meeting before the expiry of its term as required by Section 73-H of the Act and consequently, the Registrar had held the election under his authority under Section 73-H(2). In the circumstances, the case of the Petitioner is that the declaration of the result in that case must take effect from the point of time at which the Returning Officer announced the result of the election and Rule 60 would have no application.

2. The Learned Judge was of the view that the parties would be required to lead evidence on the issue of limitation. The Co-operative

Appellate Court, on the other hand, took note of the fact that the answer to the question would depend upon the relevant provisions of law, but the learned Judge was of the view that the preliminary issue requires investigation. Of what the Co-operative Appellate Court meant was that the issue would require consideration, that is really no ground to refuse to frame a preliminary issue if the issue is a pure issue of law. In the present case the narration in the earlier part of this judgment would show that there is absolutely no dispute between the parties about the facts. The question is as to whether the date of declaration for the result would be 1st February, 2004 on which date the Returning Officer announced the results or 7th February, 2004 on which date the special general body meeting was held. This does not require leading of any evidence and in my view, directing that the entire trial should take place would only result in protracting the proceedings if they are otherwise to be completed on the question of limitation. Hence, the impugned order requires to be interfered with in exercise of the jurisdiction under Article 227. The Trial Court is directed to frame an issue of limitation and to

decide the issue as a preliminary issue. However, it is clarified that nothing contained in this order shall be regarded as expression of any opinion on that issue or on the merits of the case. In the circumstances, the impugned order of the Co-operate Appellate Court dated 18th March, 2005 is quashed and set aside. The Petition is accordingly disposed of.